

## **Hotchalk Inc. v. Scottsdale Ins. Co.**

Year: 2017

Court: U.S. Court of Appeals, 9th Circuit

Case Number: 16-17287

In California, coverage wording in insurance policies are interpreted broadly so as to afford the greatest possible protection to the insured, while exclusions are construed narrowly and against the insurer. Exclusions must be conspicuous, plain and clear. If provisions in an insurance policy are ambiguous, the ambiguity must be resolved against the drafter – the insurer – and in favor of coverage for the insured. Most importantly, courts will not construe exclusions broadly in a way that makes coverage illusory or violates an insured’s reasonable expectations. Under a Directors and Officers (“D&O”) policy, an insurer owes a duty to defend claims alleging any error, omission, breach of duty or act allegedly committed or attempted by the company’s management. Claims arising from the insured’s failure to provide “professional services” are typically excluded under a D&O policy, as these claims may be covered by other insurance. Professional services are generally defined as those that services that the insured provides to its customers, which would not include decisions about company management and governance. Here, the insured faced allegations that the company’s management (i.e., it’s Director’s and Officers) made a wrongful decision when structuring its employee compensation program. The insurer refused to defend under the D&O policy, arguing that the professional services exclusion barred coverage. Arguing for reversal, UP reminded the court that internal management decisions cannot by definition be professional services within the meaning of the exclusion and such an interpretation violates an insured’s reasonable expectations and renders coverage illusory.

UP's brief was authored pro bono by Tyler C. Gerking, Esq. and Deborah K. Barron Esq. of Farella Braun and Martel LLP; UP Executive Director Amy Bach, Esq. and Staff Attorney Dan Wade, Esq.